

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Audit, Risk & Scrutiny
<b>DATE</b>	24 February 2021
<b>REPORT TITLE</b>	RIPSA – Annual Report
<b>REPORT NUMBER</b>	COM/21/040
<b>DIRECTOR</b>	Chief Executive
<b>CHIEF OFFICER</b>	Fraser Bell – Chief Officer
<b>REPORT AUTHOR</b>	Jess Anderson
<b>TERMS OF REFERENCE</b>	5.2 and 6.4

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### 1. PURPOSE OF REPORT

- 1.1 It is recommended as good practice, under paragraph 4.43 of the Scottish Government's Code of Practice for Covert Surveillance and Property interference, that elected members consider a statement on the Council's Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) policy and statistical information on relevant activity on an annual basis. This report provides an overview of RIPSA compliance, progress made in 2020 and sets the workplan for 2021.

### 2. RECOMMENDATION(S)

That the Committee resolves to: -

- 2.1 Note the report.

### 3. BACKGROUND

- 3.1 The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), gives the Council powers to conduct two types of covert surveillance:
1. Directed Surveillance; and
  2. the use of a Covert Human Intelligence Source (the use of an undercover officer).
- 3.2 The Council has a Protocol and Procedure in place which governs the use and management of covert surveillance. Further, all members of staff wishing to use RIPSA, are required to undertake training prior to being able to make an application under RIPSA.
- 3.3 Various Council services use RIPSA as an investigatory tool. It is considered the "tool of last resort" in light of its intrusiveness into the privacy of the person(s) being surveyed. Council services such as Trading Standards and Environmental Health are most likely to use RIPSA.

- 3.4 This Committee normally receives an update on covert surveillance activity on a quarterly basis but due to the Council only considering urgent business during the response to the COVID-19 pandemic, the RIPSAs activity report tabled on the 8<sup>th</sup> October 2020 covered Q1- Q3<sup>1</sup>. This Annual report pulls together an analysis of surveillance activity over 2020 (Q1-Q4<sup>2</sup>) and provides members with a more detailed overview of developments in RIPSAs compliance since the last Annual Report in February 2020. The role of this Committee is to monitor compliance with the Protocol to ensure that it is being used consistently and that that the policy remains fit for purpose.

## **APPLICATIONS FOR COVERT SURVEILLANCE**

- 3.5 As was reported in October 2020, there was 1 application for covert surveillance which was authorised in Q2<sup>3</sup>. The authorisation was for Directed Surveillance. There were no further authorisations under RIPSAs in 2020. The lack of authorisations in 2020 was due to the impact of COVID-19 as Services who would normally use RIPSAs authorisations to carry out normal business, such as test purchases, were unable to do so due to lockdown measures and restrictions on social distancing. Not only that, services like Trading Standards and Environmental Health were working together supporting compliance with the Coronavirus legislation to ensure safe practices were being adhered to.
- 3.6 Under RIPSAs and the Council's Protocol on Covert Surveillance, the duration of a Directed Surveillance authorisation is 3 months. Guidance states that the operation should be reviewed at the earliest opportunity after its conclusion and cancelled thereafter, if appropriate. In the case of the authorisation in 2020, members should note that the authorisation was cancelled within the 3-month statutory period and it was audited by the Regulatory & Compliance Team, Legal Services as is standard practice. This approach continues to be supported by the Investigatory Powers Commissioner.
- 3.7 There have been no applications for covert surveillance activity so far this year.

## **AWARENESS RAISING**

- 3.8 In October 2020, a Covert Surveillance page was launched on the Council's Intranet site and it is encouraging to note that at the time of writing this report it has had 241 views. The page contains the Protocol on Covert Surveillance and associated guidance for those officers who make enquiries about surveillance but who are not trained.
- 3.9 As noted in October 2020, the online interactive restricted forum is now fully operational. It is a requirement that mandatory RIPSAs training must be had before access can be granted to the forum. 34 invitations were issued to all

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<sup>1</sup> Q1 - January-March 2020, Q2 – April to June 2020, Q3 – July to September 2020

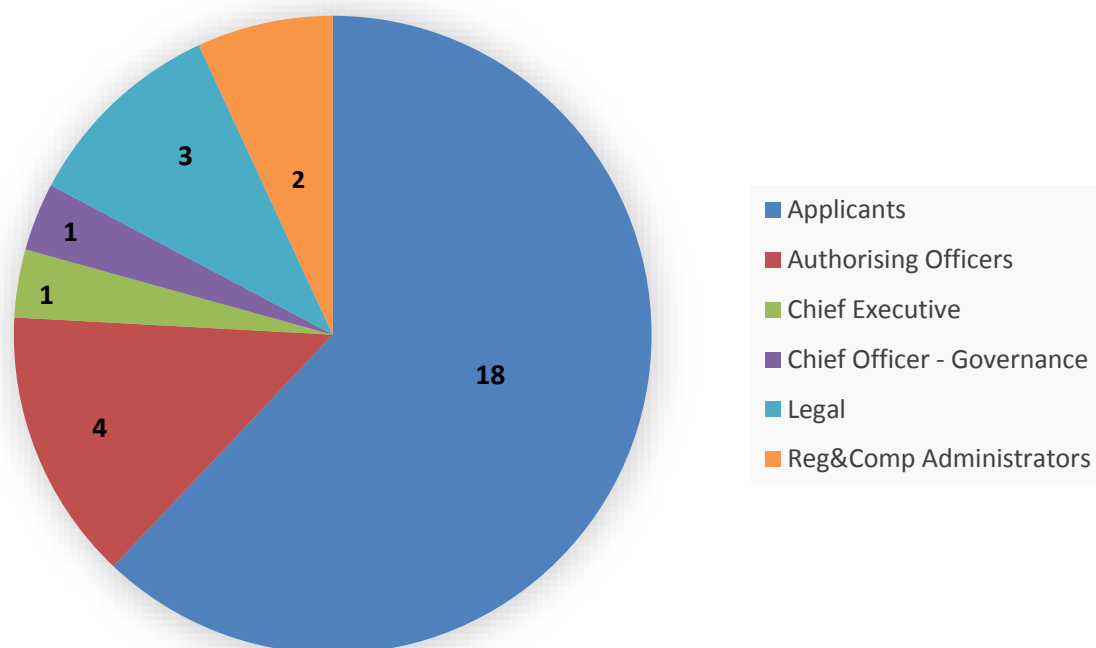
<sup>2</sup> Q1 - January-March 2020, Q2 – April to June 2020, Q3 – July to September 2020, Q4 – October to December 2020

<sup>3</sup> April to June 2020

applicants and there are now 29 active members. There are 4 pending invitations and those individuals have been contacted to confirm whether access to the forum is still required. During the inspection last year, the IPCO was given access to the forum for a limited period.

3.10 The chart below shows a breakdown of the roles of members of the forum. The Chief Officer- Governance is the Council's Senior Responsible Officer for RIPSA and is fully trained albeit he is not involved with operational matters. The Chief Executive has also had full training and is the only officer who is designated in law to authorise certain types of authorisation.<sup>4</sup>

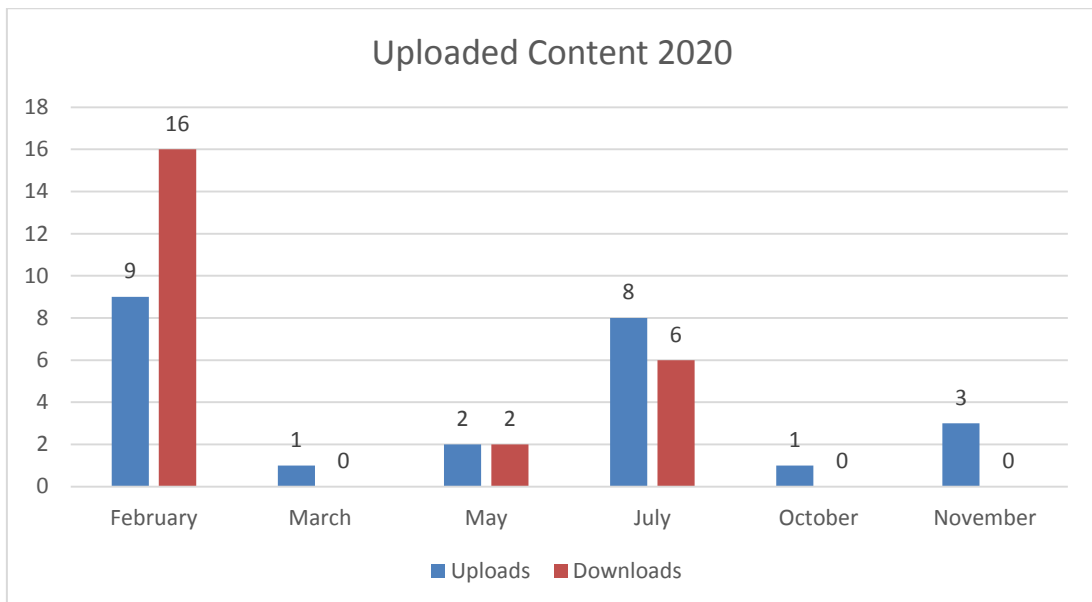
**Role of Active Members**



3.11 Whilst there has been minimal RIPSA activity in 2020, the online forum has been regularly updated. The chart below shows the number of items added to the forum throughout the year and how many times documents were downloaded by members in that same month.

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<sup>4</sup> In the past 16 years there have been no circumstances which have warranted an application for covert surveillance being authorised at Chief Executive level.



- 3.12 It's worth highlighting that "Uploads" are the documents that have been added to the online forum such as; the Protocol, procedures, guidance notes, Application and Authorisation forms, as well as, Committee reports, news articles, IPCO publications and the 2020 Inspection report. "Downloads" shows the number of times members have proceeded to download a document from the forum. Elected Members will note that the downloads do correspond with the months where there has been an upload to the site. However, despite there being no downloads in some months where there has been an upload, there is evidence that the members are going onto the site and viewing items of interest. This is encouraging and evidences that the forum is being used by members throughout the year. Further, members are notified by email when a new item is added to the forum and they are able if so minded, to start a discussion on a particular item or seek further clarification if that's required.
- 3.13 The Corporate Protocol and Procedure on Covert Surveillance was reviewed and endorsed by Elected Members in October 2020. There here have been no changes to the Protocol since, and the requirement of members to "set" policy in terms of the Code of Practice, is therefore discharged.
- 3.14 Finally, as was reported in October, there are no further matters that need addressed as a follow up to the IPCO inspection. The next inspection will be due in or around, Spring 2023.

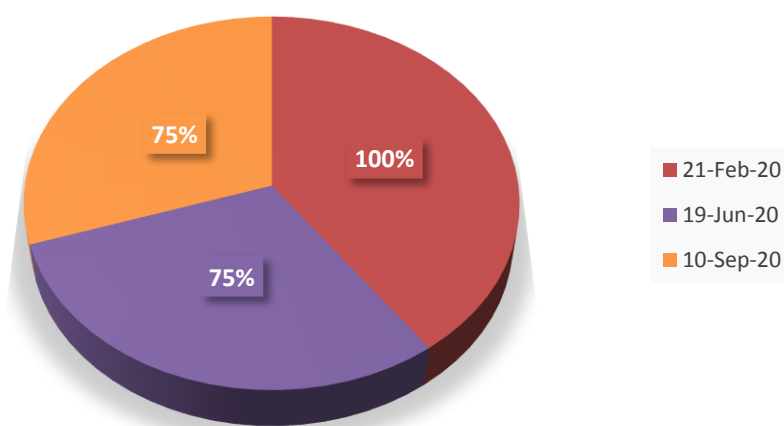
## **TRAINING**

- 3.15 Last Summer, the Regulatory and Compliance Legal Team were approached to carry out training for another Scottish Local Authority and that was carried out remotely in October. The training consisted of 3 one-hour sessions conducted via Microsoft Teams. Feedback from attendees was positive and the training sessions also included interactive quizzes that attendees could participate in whilst being in the training session. This encouraged participation and individual learning with the results being viewable instantly as attendees

took part. Elements of this structure will be modified for use with ACC staff who have been put forward as requiring RIPSA training this year.

- 3.16 In the latter part of 2018, refresher training (and where necessary full training) was provided to all applicants and officers who were new to covert surveillance work within the Council. Whilst no training took place from October to December 2020 for ACC staff, all applicants have had access to the online forum from Spring 2020. Updates to the Application and Authorisation forms, the Protocol and new guidance were all uploaded to the forum. To that end, members can be assured that the knowledge and awareness raising of RIPSA matters have continued despite minimal RIPSA activity in 2020.
- 3.17 At the time of writing a list of staff requiring full and refresher training is being compiled and verified. It is hoped that full RIPSA training will be delivered by the end of Q2<sup>5</sup>. The format of refresher training was discussed with Authorising Officers at the first quarterly meeting this year. The feedback was that a small recap of the key points together with a more interactive session would be beneficial for staff.
- 3.18 The Regulatory and Compliance team undertakes quarterly meetings with Authorising Officers (AO) which provides the space and time for discussions about feedback from any audits of authorisation forms, general practice and provides an opportunity for AO's to raise any queries they might have.

### AO 2020 Meeting Attendance



- 3.19 Last year there were three AO meetings, as is shown in the above pie chart. Despite the pressures on AO's of the Council's response to the COVID-19 pandemic, there was a 75% attendance rate at these meetings. The first AO meeting this year took place on the 14<sup>th</sup> January 2021, with the meetings scheduled for June, August and November. At the June meeting a member of Environmental Health will attend to explain their role and how that can link into RIPSA activity and the need for an authorisation.

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<sup>5</sup> April to June 2021

3.20 In addition to having access to the Forum and quarterly meetings, a restricted Microsoft Teams channel will be set up for the AO's which will provide an instant method of communication around AO meetings.

## **2021 – WORKPLAN**

3.21 The main focus for 2021 will be the delivering of training to ACC staff. As noted in this report, the aim is to deliver full training during Q2. Refresher training will be completed by the end of Q3.

3.22 Additionally, the forum will be used to “test” knowledge more frequently throughout the year, with new or interactive content linked to related news articles and questions posed to create discussion between members.

## **4. FINANCIAL IMPLICATIONS**

4.1 There are no financial implications arising from this report.

## **5. LEGAL IMPLICATIONS**

5.1 The Scottish Government Code of Practice on Covert Surveillance sets an expectation that elected members review and monitor the use of RIPSAs on a quarterly basis. The Code also reflects that elected members should set the Policy on an annual basis. This Annual Report brings together a review of all RIPSAs activity throughout the last year and provides members with an overview of the Council's compliance. Regular scrutiny by members is also a matter which is taken into account by the Investigatory Powers Commissioner's Office (IPCO) when they carry out their inspections.

5.2 A review of the Council's RIPSAs activity by elected members provides assurance that the Council's use of RIPSAs is being used consistently and that the standards set by its policy remain fit for purpose, this is done by reporting to this Committee quarterly.

5.3 The management, knowledge and awareness of those involved with RIPSAs activity was something which was commended by the Commissioner in the 2020 inspection report. The reporting of RIPSAs activity to Committee provides another level of scrutiny and assurance on the use of RIPSAs. The next IPCO inspection is expected to be in 2023.

## **6. MANAGEMENT OF RISK**

<b>Category</b>	<b>Risk</b>	<b>Low (L) Medium (M) High (H)</b>	<b>Mitigation</b>
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<b>Strategic Risk</b>	There are no strategic risks arising from this report.	L	
<b>Compliance</b>	Reporting on the use of RIPSAs ensures that the Council continues to comply with the Code of Practice and that elected members continue to provide a level of scrutiny on matters of policy.	L	Quarterly and annual reporting on RIPSAs activity and the related policy to members, mitigates the risks highlighted in this section.
<b>Operational</b>	<p>Failure to report to and update Committee on RIPSAs activity means that it would undermine public confidence in the Council and how it operates.</p> <p>There are no employee risks related to this report.</p> <p>There are no technological risks arising from this report.</p>	L	
<b>Financial</b>	There are no financial risks arising from this report. There are no environmental risks arising from this report.	L	
<b>Reputational</b>	Failure to not update Committee on RIPSAs activity would mean that the Council would be at risk of negative reputational damage when this is raised by the Investigatory Powers Commissioner's report in their inspection.	L	External inspections on RIPSAs activity operate every 3-4 years. This provides external assurance to the Committee of the Council's compliance with RIPSAs. The Inspection Report is shared with Committee and any Action Plan created, endorsed and approved by Committee.

<b>Environment / Climate</b>	There are no environmental risks arising from this report.	L	
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## 7. OUTCOMES

<b><u>COUNCIL DELIVERY PLAN</u></b>	
<b>Impact of Report</b>	
<b>Aberdeen City Council Policy Statement</b>	This report does not have an impact on the policy statement.
<b>Aberdeen City Local Outcome Improvement Plan</b>	
Prosperous Economy Stretch Outcomes	This report does not link to this theme directly. The use of RIPSA activity by the Council as an investigatory tool may have an impact on the economy as a result of enforcement action taken by services such as Trading Standard, e.g. such as in enforcing the law around counterfeit goods.
Prosperous Place Stretch Outcomes	Enforcement activity undertaken by the Council by using, where appropriate, its powers under RIPSA, may have an impact on this theme by tackling the selling of counterfeit goods.
<b>Regional and City Strategies</b>	This report does not have an impact on the Regional and City Strategies.
<b>UK and Scottish Legislative and Policy Programmes</b>	
	This report sets out the RIPSA Annual Report, which fulfils the requirements placed upon the Council under paragraph 4.43 of the Scottish Government's Code of Practice for Covert Surveillance and Property interference.

## 8. IMPACT ASSESSMENTS

*Reflect whether any of the following have been completed as part of your report*

Assessment	Outcome
Impact Assessment	Full impact assessment required / not required
Data Protection Impact Assessment	Required / not required

## 9. BACKGROUND PAPERS

None

## 10. APPENDICES

None

## 11. REPORT AUTHOR CONTACT DETAILS

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